

REMARKS

The present Amendment is in response to the Non-Final Office Action mailed August 4, 2008, in the above-identified patent application.

As an initial matter, Applicants acknowledge and appreciate the Examiner's indication that claims 69-74 and 80 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

In the present Amendment, Applicants have amended claim 66 to add the following recitation: "whereby the internal threads of said driving member mate with the threaded section on the outer surface of said guide rail." Support for this recitation is found in the originally filed specification at, *inter alia*, paragraph [0033]. In addition, claim 80 has been amended to depend from claim 77, rather than claim 79. Moreover, claim 81 has been amended to positively recite "a collar mounted on the outer surface of said guide rail." Claim 83 has been amended to reflect changes made to claim 81.

In the Office Action, claims 81-84 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In response, as indicated above, Applicants have amended claim 81 to positively recite "a collar" wherein "said driving member is rotatable in a first direction for *sliding said collar* toward the distal end of said guide rail." (Emphasis added). Claim 83 has been amended to reflect changes made to claim 81. In view of the above-noted amendment, Applicants respectfully assert that claims 81-84 now satisfy the requirements of 35 U.S.C. § 112, first paragraph, and are otherwise allowable.

The Examiner rejected claims 65-68 and 81-84 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,368,598 to Hasson (hereinafter "the '598 patent"). Referring to FIG. 2 thereof, Hasson teaches an instrument including a flexible tube 60 having an outer sleeve 108 and a sealing member 110 slidable over the outer surface of the flexible tube 60. A locking screw 132 fixes the position of the outer sleeve 108 at a desired location along the length of the flexible tube 60. The instrument includes a spring 116 having an upper end seated against a shoulder 128 within a lumen of the outer sleeve 108 and a lower end seated in a socket 114 of a cylindrical extension 112 of the sealing member 110. The spring 116 biases the sealing member 110 away from the outer sleeve 108. The outer surface 134 of the flexible tube 60 has graduations 136 thereon to provide a visual indication of the relative positions of a guide tube 50 relative to the flexible tube 60, which indicates the amount of extension of the distal tube

end 58 into a body cavity.

Applicants respectfully assert that the claims of the present application contain numerous limitations that are neither disclosed nor suggested by the '598 patent. Independent claim 65 is unanticipated by the '598 patent because the reference does not teach a device including a guide rail "wherein the outer surface of said guide rail includes a threaded section." Independent claim 65 is also unanticipated because the '598 patent does not teach a "driving member having internal threads for engaging the threaded section of said guide rail." Clearly, the '598 patent provides no teaching that threads on outer sleeve 108 engage threads on flexible tube 60.

Independent claim 65 is also unanticipated because the '598 patent does not teach a tissue grasping assembly "including a first elongated element connected with the outer surface of said guide rail." Referring to FIGS. 4 and 5 of the '598 patent, the tenaculum 124 is not "connected with the outer surface" of the tube 60 as required by claim 65. Rather, it is coupled with the projecting arm 120 of the outer sleeve 108. The tenaculum never actually contacts any part of the flexible tube 60 or the sealing member 110 on the tube. Independent claim 65 is also unanticipated by the '598 patent because the reference does not teach a device including "a medical instrument slidably mounted on the outer surface of said guide rail between said collar and the connection of said first elongated element with the outer surface of said guide rail, wherein rotation of said driving member in a first direction slides said collar toward the distal end of said guide rail which, in turn, urges said medical instrument toward the distal end of said guide rail."

Claim 66 is unanticipated by the '598 patent because the reference does not teach a device "wherein said driving member is rotatable about the longitudinal axis whereby the internal threads of said driving member mate with the threaded section on the outer surface of said guide rail." As noted above, the graduations 136 shown in FIG. 2 of the '598 patent are not threads, but are merely visual indicators that "give the user a visual indication of the relative positions of the guide and second tubes 50,60, respectively." Col. 6, Ins. 1-5. Claims 67-68 are unanticipated, *inter alia*, by virtue of their dependence from claim 65, which is unanticipated for the reasons set forth above.

Independent claim 81 is unanticipated by the '598 patent because the reference does not teach a device including a guide rail "wherein the outer surface of said guide rail includes a threaded section." Independent claim 65 is also unanticipated because the '598 patent does not

teach a tissue grasping assembly including “a first elongated element connected with the outer surface of said guide rail.” Referring to FIGS. 4 and 5 of the ‘598 patent, the tenaculum 124 is not “connected with the outer surface” of the tube 60. Rather it is coupled with the projecting arm 120 of the outer sleeve 108 and never actually contacts the tube 60 or the sealing member 110. Independent claim 81 is also unanticipated because the ‘598 patent does not teach a driving member “having internal threads for engaging the threaded section of said guide rail.” Independent claim 65 is also unanticipated by the ‘598 patent because the reference does not teach a device including “a medical instrument slidably mounted onto the outer surface of said guide rail between said driving member and the distal end of said guide rail, wherein said driving member is rotatable in a first direction for sliding said collar toward the distal end of said guide rail which, in turn, engages and urges said medical instrument to slide over the outer surface of said guide rail and toward the distal end of said guide rail.”

Claims 82-84 are patentable, *inter alia*, by virtue of their dependence from claim 81, which is patentable for the reasons set forth above.

The Examiner rejected claims 75-79 under 35 U.S.C. § 103(a) as being unpatentable over the ‘598 patent in view of U.S. Patent No. 3,320,948 to Martin (hereinafter “Martin”). The Examiner asserts that Martin “teaches the tissue grasping assembly has a distal end connected with the outer surface of the guide rail.” Referring to FIG. 1 thereof, Martin discloses an instrument including a surgical needle 3 and a tenaculum 2 overlying the surgical needle 3. There is no teaching or suggestion that the distal end of the tenaculum is connected with the surgical needle. In fact, FIG. 1 clearly shows that the distal end of the tenaculum 2 is spaced from and not connected with the surgical needle 3.

Claim 75 is patentable over the ‘598 patent and Martin because the references neither teach nor suggest a device including a guide rail “wherein the outer surface of said guide rail includes a threaded section.” Claim 75 is also patentable because the references neither teach nor suggest a device including a driving member “having a distal end with internal threads for engaging the threaded section of said guide rail and a proximal end accessible at the proximal end of said guide rail.” In addition, claim 75 is patentable over the ‘598 patent and Martin because the references neither teach nor suggest “a tissue grasping assembly including a first elongated element having a distal end connected with the outer surface of said guide rail.” Moreover, claim 75 is patentable over the ‘598 patent and Martin because the references neither teach nor suggest a device whereby the “driving member is advanceable toward the

distal end of said guide rail for urging said collar to slide over the threaded section of said guide rail toward the distal end of said guide rail." Claims 76-79 are patentable, *inter alia*, by virtue of their dependence from claim 75, which is patentable for the reasons set forth above.

As it is believed that all of the rejections set forth by the Examiner have been overcome, prompt consideration and allowance of the present application is earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 689-8700 in order to overcome any additional objections that she may have.

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Respectfully submitted,

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